

the District objects to joint representation by NEA-NH of the teachers' bargaining unit and the support staffs' bargaining unit contending that members of the former bargaining unit supervise members of the latter so that interests will conflict. On April 30, 1997, a hearing was held before the undersigned hearing officer, after which the record was closed.

FINDINGS OF FACT

1. Inter-Lakes School District employs teachers and various support personnel in the operation of its school system and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. NEA-New Hampshire is the exclusive bargaining representative for the Inter-Lakes Education Association, the teachers' bargaining unit, and has proposed to likewise serve the Inter-Lakes Education Support Personnel. The proposed bargaining unit is to consist of fifty education aides and assistants, six secretaries and other office personnel, twelve custodians and maintenance personnel and twelve food service personnel. Sample contracts, job descriptions, and wage and benefit information have been supplied for several of the positions. (District Nos. 1-17, 19).
3. More than forty of the education aides are special education aides who are directed and evaluated by the special education director and principal with input from the teacher in whose classroom the aide assists a student with special needs. The remainder are Chapter I aides who assist students with reading skills. Chapter I aides are evaluated and supervised by the project manager or the assistant principal (District No. 16). Testimony was that there is some written supervisory input on special education aides' performances requested from classroom teachers. Job descriptions for these aide positions are in evidence. (District Nos. 14, 16, 17). There is no job description for the position of classroom teacher.
4. George O. Lapierre, a junior high school English teacher and the teachers' bargaining unit president, testified that he never supervises or directs special education aides in his classroom since each aide is

placed there by the IEP (Individual Education Plan) team to assist one student. The aide is directed by the head of special education department.

5. Testimony and school board meeting minutes (Association No. 3) provide some evidence of an attempt at joint bargaining by the various categories of non-certified staff prior to the filing of the petition for certification.
6. Custodians check restrooms for infractions such as smoking. Custodians sometimes alter furniture to meet special needs of students. Cafeteria staff assist in monitoring lunch room behavior of students. Office staff assist in a classroom in the absence of a teacher.

DECISION AND ORDER

RSA 273-A:8 empowers the Public Employee Labor Relations Board to determine the composition of bargaining units. RSA 273-A:8 II proscribes mingling in a single bargaining unit those who exercise significant supervisory authority with those supervised. The Supreme Court has interpreted that to mean that a unit of supervisors may not choose the same union to represent it as those whom they supervise. Appeal of Manchester Board of School Committee, 129 N.H. 151 (1987). In the cited case, the newly formed bargaining unit for principals chose the same representative as represented the teachers' unit.

NEA-New Hampshire represents Inter-Lakes Teachers Association (ILEA) and proposes to represent Inter-Lakes support personnel. Considering the above cited case, a threshold determination is required as to whether or not a supervisory relationship, which might pose a bar to joint representation, exists between the teachers and the aides/assistants who provide services to students in the classrooms. Testimony was that, at year's end, teachers are asked to fill out an evaluation form for special education aides who have worked in their classrooms. Decisions regarding placement of aides are made by the Individual Education Plan (IEP) team for each student. Although, the job description for the position of special education aide states that the classroom teacher is one of three positions to whom this position reports, (District No. 14), testimony reveals that aides report to the director of special education or a member of the administration. The teacher would provide no discipline but would approach the director of special education if the placement of an aide were not satisfactory. The teacher would take no supervisory action directly.

Special education aides work with special needs students on a one to one basis in the classroom while the classroom teacher performs his or her work with the remaining students. The degree of supervision attested does not rise to the level of that exercised by a working supervisor. Classroom teachers do not exercise significant supervisory authority over educational aides and assistants and so the bar established in Appeal of Manchester, 129 N.H. 151, does not apply.

Though educational aides and assistants, office staff, custodians and kitchen staff all work for the same employer, they do so under different terms and conditions of employment. Methods of payment, benefits, hours, scheduling and tasks differ greatly. The evidence of a community of interest is not sufficient to overcome the testimony and documentary evidence of material differences between the four categories of support staff. By and large, the actions brought out in testimony to demonstrate office staff, custodians and food service employees' participation in the overall process of education were incidental to and not integral to their employment. (School District Nos. 1-13).

A community of interest has not been shown between the four categories of support staff. A bargaining unit of educational aides and assistants is the appropriate bargaining unit and so shall be certified. This decision is not intended to preclude a subsequent petition for a bargaining unit for support staff not directly involved in the education of students.

So ordered.

Signed this 20th day of June, 1997.



Gail C. Morrison
Hearing Officer